In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:	)	
	)	Adversary Proceeding
CHARISE L. REYNA	)	
(Chapter 7 Case Number 96-42600)	)	Number 98-4142
	)	
Debtor	)	
	)	
	)	
	)	
FARMERS FURNITURE	)	
	)	
Plaintiff	)	
	)	
	)	
v.	)	
	)	
CHARISE L. REYNA	)	
	)	
Defendant	)	

MEMORANDUM AND ORDER

Debtor's Chapter 13 case was filed on October 15, 1996. Debtor's plan valued the collateral of Plaintiff Farmers Furniture at $1,200.00 and the plan was confirmed. On April 6, 1998, Debtor's case was converted to Chapter 7 and an adversary proceeding was filed seeking a determination of dischargeability of Farmers Furniture's debt. After an evidentiary hearing, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor purchased furniture from the Plaintiff in 1994. Some of the furniture was returned, but she maintained the bulk of it and incurred an obligation in the original principal amount

of approximately $1,700.00. After application of payments received from the Chapter 13 Trustee the balance on the indebtedness is $1,179.49. Of relevance to this case is that following conversion of the case to Chapter 7 the Plaintiff learned that all of the items of furniture which the Debtor had pledged to secure her purchase money obligation had been disposed of. Debtor's testimony, which stands uncontradicted, is that the furniture purchased in March 1994 was in such poor condition that she determined it had no further utility to her or any reasonable value to anyone, and she therefore disposed of it by placing it in or near a commercial dumpster in October 1997. This manner of disposing of the collateral is central to this adversary proceeding.

On cross examination, Debtor conceded that a repair person was sent from Farmers Furniture on the only occasion when she reported any problems with the furniture. She placed no other calls concerning the poor condition of the furniture.

> The contract provides:
>
> All property purchased from Seller under this and prior contracts shall be kept at Buyer(s) address entered on this contract, shall not be sold, transferred, delivered or moved therefrom (except upon Seller's written consent) until the "Total of Payments" has been paid.

(Ex. P-1). Debtor concedes that she did not receive any verbal or written permission to dispose of the collateral. When her case was converted from Chapter 13 to Chapter 7 in April 1998, she scheduled the property as having a value of $1,200.00 in her Schedule "B," which was executed under penalty of perjury. She conceded that she knew at the time she disposed of the furniture that Farmers Furniture would not ever see the property again and would not get paid anything for its value. She further acknowledges that Farmers Furniture had rights of repossession and that they would lose at least a minimal sum of money as a result of her conversion to Chapter 7 and the

disposition of the property.

In addition to the furniture, Debtor had purchased a watch in a separate transaction with Farmers Furniture, but at trial could not offer a satisfactory explanation of its disposition. When questioned about the disposition of the watch, she initially stated she had no idea where it was and became evasive, but ultimately identified a Lawrence Owens of Washington, D.C., as the recipient.

Plaintiff's representative testified, consistent with Debtor's testimony, that Farmers Furniture had provided repair service on the one occasion that she complained about the condition of the furniture and that she had never offered to surrender the collateral to them. He did concede, however, that repairs are ordinarily done only during the two year term of the contract and that repairs beyond that date would have been performed only on a "good will" basis. He was unable to contradict her testimony that the collateral was of no value at the time of the disposition because he was not given the chance to inspect it, have it evaluated, or take possession of it.

At the time that Debtor filed her Chapter 13 plan, she did not value the collateral. When the case was converted, her statement of intent concerning disposition of the collateral was that she intended to "surrender" the collateral to the creditor and she valued it at $1,200.00. When questioned as to why she didn't call Farmers Furniture to simply pick up the collateral, she stated she didn't know. She testified that she had disposed of it because the foam in the pillows was coming out, the cushions were sagging, that she had remarried and that her new husband's furniture was in better condition than hers.

CONCLUSIONS OF LAW

In an action to determine the nondischargeability of a debt, the plaintiff bears the burden of proving by a preponderance of the evidence that a discharge is not warranted. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). While the underlying claim is determined by looking to state law, though, whether or not the debt is excepted from discharge is distinctly a matter of federal law governed by the terms of the Bankruptcy Code. Grogan, 498 U.S. at 284, 111 S.Ct. at 657-658 (*citing* Brown v. Felsen, 442 U.S. 127, 129-130, 136, 99 S.Ct. 2205, 2208-2209, 2211, 60 L.Ed.2d 767 (1979).)

Farmers Furniture brings this complaint under 11 U.S.C. § 523(a)(6), which provides as follows:

> (a) A discharge under section 727, 1141, 1228[a] 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

A debt will only be nondischargeable if it results from a deliberate and intentional injury, not merely a deliberate or intentional act that leads to injury. Kawaauhau v. Geiger, – U.S. – , 118 S.Ct. 974, 977, 140 L.Ed.2d 90 (1998). Debts excepted from discharge under Section 523(a)(6) are in the category of "intentional torts." Id.

The unanimous Geiger Court, while narrowing the scope of Section 523(a)(6) in a medical malpractice case, specifically reaffirmed previous Supreme Court case law on conversion debts in bankruptcy. Id. at 978.

> [D]ecisions of this Court are in accord with our construction. In

> McIntyre v. Kavanaugh, 242 U.S. 138, 37 S.Ct. 38, 61 L.Ed. 205 (1916), a broker "deprived another of his property forever by deliberately disposing of it without semblance of authority." Id., at 141, 37 S.Ct., at 39. The Court held that this act constituted an intentional injury to property of another, bringing it within the discharge exception. But in Davis v. Aetna Acceptance Co., 293 U.S. 328, 55 S.Ct. 151, 79 L.Ed. 393 (1934), the Court explained that not every tort judgment for conversion is exempt from discharge. Negligent or reckless acts, the Court held, do not suffice to establish that a resulting injury is "willful and malicious." See id., at 332, 55 S.Ct., at 153.

Geiger, 118 S.Ct. at 978. Thus, if the interference with the secured party's rights in the collateral is found to be intentional, the conversion debt is excepted from discharge. *See* McIntyre, 37 S.Ct. at 39 (rejecting contention that liabilities for conversion were outside scope of predecessor to Section 523(a)(6)).

While not dispositive, this Court notes that the same result is obtained by looking to state law, under which conversion of another's property or interests in property is a tort for which punitive damages may be recovered. O.C.G.A. §§ 15-10-1, 15-10-6, 15-12-5.1; *see also* Privetera v. Addison, 190 Ga. App. 102, 104, 378 S.E.2d 312, 315 (1989), *cert. denied*, (March 2, 1989). "Any distinct act of dominion wrongfully asserted over another's property in denial of his right or inconsistent with it is a conversion." Bromley v. Bromley, 106 Ga. App. 606, 610, 127 S.E.2d 836, 839-840 (1962). The value of property converted does not diminish a wronged party's right to seek damages for a willful conversion. *See* Norred v. Dispain, 119 Ga. App. 29, 32, 166 S.E.2d 38, 41 (1969) (defendant can not avoid liability for rental by unlawfully refusing to surrender possession of property to plaintiff and thus preventing property from being repaired and placed in rentable condition).

The crux of the matter is whether the debtor intended the consequences of the act,

i.e., to deprive the creditor of its lawful exercise of rights in the collateral by disposing of the collateral without the creditor's knowledge or consent. *See* Geiger, 118 S.Ct. at 977 (*citing* Restatement (Second) of Torts § 8A, comment a, p.15 (1964)). I find that Farmers Furniture has carried its burden of persuasion and that the Debtor did in fact intend such a result. The fact that the furniture, in Debtor's opinion, had little if any value does not excuse Debtor's interference with the right of Farmers Furniture to do what it wished with the collateral in which it held a legal interest.

ORDER

In light of the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that the debt owed to Farmers Furniture is excepted from discharge.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of January, 1999.